



**REPORT ON EXAMINATION  
OF THE  
SEGREGATED GIFT ANNUITY FUND  
OF THE  
UNIVERSITY AT ALBANY FOUNDATION**

**AS OF December 31, 2018**

**EXAMINER: Adelia Gbadamosi**

**DATE OF REPORT: August 23, 2019**

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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ADELIA GBADAMOSI

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KATHY HOCHUL  
Governor



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ADRIENNE A. HARRIS  
Superintendent

September 9, 2022

Honorable Adrienne A. Harris  
Superintendent of Financial Services  
New York, New York 10004

Madam:

In accordance with instructions contained in Appointment No. 31930 dated May 16, 2019 and annexed hereto, an examination has been made into the condition and affairs of the Segregated Gift Annuity Fund of the University at Albany Foundation, hereinafter referred to as "the Fund," at its home office located at 1400 Washington Avenue, Albany, New York 12222.

The report indicating the results of this examination is respectfully submitted.

## 1. EXECUTIVE SUMMARY

The examiner recommends that the Fund review at least annually its written investment policy setting forth guidelines on investments and delegation of management and the conformance of its delegees to that investment policy and statutory guidance and that it memorialize those reviews in either board minutes or materials. (See item 4A of this report)

The Fund violated Section 1110(a) of the New York Insurance Law by using annuity agreement forms that were not filed with the Superintendent. The examiner recommends that the Fund submit to the Superintendent any gift annuity agreement forms used during the examination period that have not been previously filed with the Superintendent. (See item 6 of this report)

The examiner recommends that the Fund prepare its filed annual statements in accordance with the instructions for completing the New York State Segregated Gift Annuity Fund Annual Statement. (See item 7 of this report)

During the course of the examination, the examiner became aware of a program under which University at Albany Foundation operated a charitable gift annuity assistance program for the benefit of other State University of New York campuses. This program was implemented without first obtaining full approval of all details of the program. By letter dated October 8, 2021, the Department approved the Program based upon the stipulated conditions noted in its approval and the Foundation affirming its intent to abide by the conditions. (See item 8 of this report)

## 2. SCOPE OF EXAMINATION

This Scope of Examination summarizes the nature of the Superintendent of the Department of Financial Services' ("Department" or "DFS") examination and assessment of the University at Albany Foundation Segregated Annuity Fund (the "Fund") through which University at Albany Foundation (the "Foundation") provides annuity benefits.

The prior examination was conducted as of December 31, 2013. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2018 but prior to the date of this report (i.e., the completion date of the examination).

This report outlines DFS's supervisory expectations or priorities and articulates DFS's general views regarding the exceptional circumstances where the Foundation or Fund, in relation to their annuity activities, could have better adhered to statutory standards and guidance or practices or methods of dealing that are regularly observed among similar circumstances.

The Fund is subject to the solvency and examination requirements of New York Insurance Law § 1110 and of New York Insurance Law articles 1, 2, 3, 25, and 74.

The investment of the Fund's required admitted assets is subject to N.Y. Estates, Powers and Trust Law § 11-2.3. The investment of the remainder of the Fund's admitted assets is subject to N.Y. Not-for-Profit Corporation Law Article 5-a. Both establish that the trustees are to invest the assets consistent with prudent person standards.

The examination comprised a verification of assets and liabilities as of December 31, 2018 to determine whether the Fund's filed 2018 annual statement fairly presents its financial condition. The examiner reviewed the Fund's income and disbursements necessary to accomplish such verification. The examiner also reviewed the corrective actions taken by the Fund with respect to the violations, recommendations and/or comments contained in the prior report on examination. The results of such review are contained in item 9 of this report.

### 3. DESCRIPTION OF FUND

#### A. History

The University at Albany Foundation is organized for the purpose of encouraging, soliciting, receiving, accepting, holding, investing and managing money and property of every description and to disburse said money and property to promote, develop and advance the welfare of the State University of New York at Albany, its students, faculty, staff and alumni. The Foundation established the Fund to issue gift annuity agreements in return for gifts from donors in 1993. The Superintendent of Insurance granted to the Foundation a Charitable Annuity Society special permit on January 24, 1994.

#### B. Structure

The management of the Foundation and the Fund and all of its affairs and property are entrusted to a board of directors. Operations related to the issuance and settlement of annuity agreements and management of investments are handled by the Fund. The Fund's financial statements are prepared by the Foundation.

#### C. Assets under the Board of Directors

As of the June 30, 2018 IRS Form 990, the Foundation's Board of Directors oversaw an endowment comprising \$71,700,966 in total assets. The Fund, as of December 31, 2018, held total admitted assets of \$2,003,579.

#### D. Third-Party Payment Service Provider

Key Bank is the Fund's custodian and issues quarterly payments to the Fund's annuitants.

#### 4. INVESTMENT REVIEW

##### A. Investment Policy Statement

New York Estate Powers and Trust Law § 11-2.3(b)(3)(A) requires trustees to “pursue an overall investment strategy to enable the trustee[s] to make appropriate present and future distributions to or for the benefit of the beneficiaries under the governing instrument, in accordance with risk and return objectives reasonably suited to the entire portfolio.”

New York Not-for-Profit Corporation Law § 552(e)(2) requires institutions to adopt “an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.” New York Not-for-Profit Corporation Law § 552(f) provides that each “institution shall adopt a written investment policy setting forth guidelines on investments ... and delegation of management and investment functions in accord with the standards of this article.”

The Foundation prepared and provided a custom tailored investment policy statement (“IPS”) for the Fund. The Fund adopted that form as its IPS. The examiner’s review of the board minutes revealed that the Foundation failed to review the Fund’s IPS after adoption.

The examiner recommends that the Fund review at least annually its written investment policy setting forth guidelines on investments and delegation of management and the conformance of its delegees to that investment policy and statutory guidance and that it memorialize those reviews in either board minutes or materials.



## 5. ASSETS AND LIABILITIES SUMMARY

The following summary table indicates the growth (decline) in various categories of the Fund's assets, liabilities, and fund balance during the period under review:

	<u>December 31,</u> <u>2013</u>	<u>December 31,</u> <u>2018</u>	<u>Increase</u> <u>(Decrease)</u>
Admitted assets	<u>\$2,729,064</u>	<u>\$2,003,579</u>	<u>\$(725,485)</u>
Liabilities	<u>\$1,561,895</u>	<u>\$1,091,907</u>	<u>\$(469,988)</u>
Minimum required fund balance	\$ 156,190	\$ 108,767	\$ (47,423)
Excess fund balance (surplus)	<u>1,010,979</u>	<u>802,904</u>	<u>(208,075)</u>
Total annuity fund balance	<u>\$1,167,169</u>	<u>\$ 911,672</u>	<u>\$(255,497)</u>
Total liabilities and annuity fund balance	<u>\$2,729,064</u>	<u>\$2,003,579</u>	<u>\$(725,485)</u>

The decrease in assets, liabilities and annuity fund balance reflects a decrease in the total number of annuities in force. Annuities decreased from 96 with annual payment amounts of \$255,248 as of December 31, 2013 to a total of 82 with annual payment amounts of \$148,354 as of December 31, 2018.

The Fund's admitted assets, as of December 31, 2018, were invested mainly in equity securities (94.25%).

## 6. TREATMENT OF ANNUITANTS

The examiner reviewed a sample of annuity files to determine whether the annuitants were treated fairly and in accordance with the provisions of the annuity agreements. The examination also consisted of a review of the various controls involved, a check of the accuracy of the computations and the tracing of accounting data to the books of account.

Section 1110(a) of the New York Insurance Law states, in part:

“. . . Every such corporation or association shall, before making such agreement, file with the superintendent copies of its forms of agreements with annuitants. . . .”

The examiner’s review of a sample of 9 annuities issued in New York during the examination period revealed that in all 9 newly issued annuities, the Fund used annuity agreement forms that differed from annuity agreement forms on file with the Superintendent.

The Fund violated Section 1110(a) of the New York Insurance Law by using annuity agreement forms that were not filed with the Superintendent. The examiner recommends that the Fund submit to the Superintendent any gift annuity agreement forms used during the examination period that have not been previously filed with the Superintendent.

## 7. ANNUAL STATEMENT REPORTING

The instructions to Item 2 of the Notes to the Financial Statement state the following, in part:

“Generally, it is expected that the amount of annuity payments that the Segregated Gift Annuity Fund makes during the year will be approximately the amount calculated by comparing the Annualized Amount of Annuity Payments at the beginning of the year and the amount outstanding at the end of year, as reported in the Exhibit of Annuities In Force (Page 3, Columns 3 and 9). If the amount reported on Page 3, Line 8 is significantly different than the amount so calculated, OR if the Society reports "0" on Page 3, Line 8, provide an explanation at this Note.”

During the examiner’s review of the annuity payments noted in the Fund’s filed annual statements, the following differences were noted between the annuity payments reported on line 8 of the Fund’s filed annual statements and the annuity payments reported in the Exhibit of Annuities in Force:

	2014	2015	2016	2017	2018
<b>Payments per Line 8 of Disbursements Section</b>	\$267,858	\$271,949	\$278,574	\$251,539	\$180,094
<b>Annuity Payments at Beginning of Year, Exhibit of Annuities in Force</b>	\$255,248	\$257,071	\$244,215	\$219,297	\$171,337
<b>Annuity Payments at End of Year, Exhibit of Annuities in Force</b>	\$257,071	\$244,215	\$219,297	\$171,337	\$148,354

In Note 2 of each filed annual statement, the Fund stated the following regarding annuity payments made during each year under examination:

“The annuity payments reported on Page 3, Line 8, are reasonably within the amount calculated by comparing the Annualized Amount of Annuity Payments at the beginning of the year and outstanding at the end of the year as reported in the Exhibit of Annuities in Force.”

The examiner’s review noted that, for the above noted differences, the Fund included California contracts in their totals for the payments in page 3, line 8, of the annual statement. Although the Fund provided a reconciling schedule, the examiner determined that the California

payments should have been included in the Exhibit of Annuities in Force. Therefore, the payments reported in the Exhibit of Annuities in Force should have been reported as follows:

<b>Year</b>	<b>Payments Beginning of Year</b>	<b>Payments End of Year</b>
2014	\$284,902	\$286,724
2015	\$286,724	\$271,493
2016	\$271,493	\$245,196
2017	\$245,196	\$198,615
2018	\$198,615	\$175,633

The examiner recommends that the Fund prepare its filed annual statements in accordance with the instructions for completing the New York State Segregated Gift Annuity Fund Annual Statement.

## 8. CHARITABLE GIFT ANNUITY ASSISTANCE PROGRAM

The instructions for line 1 of the Income section of the annual statement state the following:

“Line 1 “Current Year” Column: Should reflect the gross amount of gifts received during the year conditioned upon annuity agreements.

“Prior Year” Column: Report the prior year’s gross amount of gifts received conditioned upon annuity agreements.

The examiner’s review of the gifts received during the year 2016 revealed the following differences between the amount of gifts received per Page 3, line 1 of the income statement in the Fund’s filed annual statements and the amount of gifts received per the reserve listings:

	<b>2016</b>
<b>Gifts Received During the Year per Pg. 3, Line 1 of the Annual Statement</b>	\$278,574
<b>Gifts Received Per Reserve Listing</b>	\$201,143

In the Foundation’s response to a memo the examiner sent questioning the difference, it noted that the Foundation was involved with other State University of New York (SUNY) institution gift annuity funds resulting from the Foundation’s assumption of the assets and liabilities of the SUNY Research Foundation in 2013, under an arrangement previously reviewed and approved by the Department. The examiner noted that the Foundation’s Charitable Gift Annuity Assistance Program (the “Program”) was servicing campus gift annuity programs for SUNY institutions by providing administrative services for two programs (SUNY New Paltz and Genesee Community College) and was servicing transferred annuities benefiting eight other SUNY institutions that were originally issued by the SUNY Research Foundation. The examiner found that the Program served 10 SUNY campuses in total. The examiner determined that the accounts of each of the SUNY foundations’ gift annuity accounts were commingled into the Foundation’s own gift annuity account, and therefore violative of Section 1110(b). This was confirmed by the examiner’s review of the Fund’s bank statements. Further, the reserve obligation was passed onto the Fund and not reported as an obligation of the gift annuity fund of any other SUNY based foundations. The Foundation believed that having such an arrangement is more cost-effective for SUNY and provides economies of scale.

The Department and the Foundation held meetings to discuss the commingling as well as various aspects of the Program. It was ultimately decided that the Program could continue, but with various modifications. The Foundation was notified that its bylaws needed to reflect that it services other SUNY based Foundations. Also, for the Charitable Gift Annuity Assistance Program institutions for SUNY New Paltz and Genesee Community College, the Foundation must separate the accounts and establish separate bank accounts for each institution, in order to maintain proper segregation of assets between funds. For the Research Foundation annuities, the contracts can be held in a common account with UAF. All annuities must meet the Department's reserving requirements. Lastly, it was deemed to be permissible for the Foundation to continue issuing contracts on UAF paper for the benefit of other SUNY campuses if it met the following requirements:

- 1) UAF's bylaws provide for UAF to support other campuses in this way.
- 2) The residuum may not be distributed to the other campuses until UAF has fulfilled all of its obligations to the annuitant under the terms of the contract.
- 3) As a control against the program being used by non-eligible entities to circumvent permit requirements, UAF will obtain from any campus participating in the program a written statement confirming: “\_\_Name of organization\_\_” is a duly organized domestic or foreign non-stock corporation or association conducted without profit and engaged in active operation for at least ten years solely in bona fide charitable, religious, missionary, educational or philanthropic activities.

By letter dated October 8, 2021, the Department approved the Program based upon the stipulated conditions noted above and the Foundation affirming its intent to abide by the conditions.

## 9. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following is the recommendation contained in the prior report on examination and the subsequent actions taken by the Fund in response to each citation:

<u>Item</u>	<u>Description</u>
A	<p>The examiner recommends that the Fund strengthen the diversification of its investment holdings. If the trustee has determined that it is in the interests of the beneficiaries not to diversify, then it should memorialize the reasons for that determination in terms of the ISS's risk, return, and time horizon parameters.</p> <p>The Department no longer provides guidance for diversification.</p>

## 10. SUMMARY AND CONCLUSIONS

Following are the violation, recommendations and comment contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The examiner recommends that the Fund review at least annually its written investment policy setting forth guidelines on investments and delegation of management and the conformance of its delegees to that investment policy and statutory guidance and that it memorialize those reviews in either board minutes or materials.	5
B	The Fund violated Section 1110(a) of the New York Insurance Law by using annuity agreement forms that were not filed with the Superintendent.	7
C	The examiner recommends that the Fund submit to the Superintendent any gift annuity agreement forms used during the examination period that have not been previously filed with the Superintendent.	7
D	The examiner recommends that the Fund prepare its filed annual statements in accordance with the instructions for completing the New York State Segregated Gift Annuity Fund Annual Statement.	9
E	During the course of the examination, the examiner became aware of a program under which University at Albany Foundation operated a charitable gift annuity assistance program for the benefit of other State University of New York campuses. This program was implement without first obtaining full approval of all details of the program. By letter dated October 8, 2021, the Department approved the Program based upon the stipulated conditions noted in its approval and the Foundation affirming its intent to abide by the conditions.	10





**APPOINTMENT NO. 31930**

**NEW YORK STATE**

**DEPARTMENT OF FINANCIAL SERVICES**

I, **LINDA A. LACEWELL**, Acting Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:

**ADELIA GBADAMOSI**

as a proper person to examine the affairs of the

**SEGREGATED GIFT ANNUITY FUND OF THE  
UNIVERSITY AT ALBANY FOUNDATION**

and to make a report to me in writing of the condition of said

**FUND**

with such other information as she shall deem requisite.

In Witness Whereof, I have hereunto subscribed my name  
and affixed the official Seal of the Department  
at the City of New York

this 16th day of May, 2019

**LINDA A. LACEWELL**  
Acting Superintendent of Financial Services

By:

*Mark McLeod*

**MARK MCLEOD**  
DEPUTY CHIEF - LIFE BUREAU

